

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Fredrick DeWayne Hines,

File No. 18-cv-3250 (ECT/BRT)

Plaintiff,

v.

**ORDER ACCEPTING REPORT  
AND RECOMMENDATION**

Minnesota Department of Corrections;  
Tom Roy; Shane E. Wernsing; Lon  
Augdahl; Stephan Cranna; Michelle  
Smith; David Rheisus; Sherlinda Wheeler;  
Deborah MacNeill; Eric Nelson; Hannah  
Lindeman; Elizabeth (Beth) Strunk; Mary  
Spaniol; Lindsey Jennelle; Cynthia  
Herme; Diane Medchill; Carlirae  
Ronning; Mary A. Bergstad; Matthew  
Marsh; Andy DuBois; Nanette Larson;  
Barb Manor; Elaine Crowern; Carla  
Thompson; Kathy Reid; Brenda Smith;  
Katherine Uhl; Jamie Peterson; Coleen  
Loucks; Danielle Kenyon; Truman Clate;  
Dana Hill; Bronson Austreng; Brian  
Bradley; "Lt. Unknown Hagen (CX-5 &  
MHU-CX-4) (PREA Investigator)"; Chad  
Oye; Jeffrey Gutzmer; "Sgt. S. Swanson  
(CX-5)"; Tim Farmer; Matthew Johnson;  
Glen Lisowy; "Sgt. Unknown Bikney  
(CX-5)"; "Sgt. Unknown Grandstand  
(CX-5)"; Lon Hovak; Craig Thacker; "D.  
Strickland (CX-5)"; "Unknown Uhl (CX5)";  
Bret Rangstich; "Unknown Kosh  
(CX-5 & MHU-CX-4)"; Victor Torres;  
"Unknown Jackson (CX-5 & CX-4)";  
Adam Perry; "J. Priase (CX-5; CX-4)";  
Brain Rhor; "J. Fredrick (CX-5 & MHUCX-  
4)"; "Unknown Minneto (CX-5 &  
MHU-CX-4)"; "Unknown Graves (CX-5  
& MHU-CX-4)"; Mic Klin; Brandon  
Huynh; "J. Smith (CX-5, CX-4)";

Anthony Crea; “Unknown O’Neill (ACU, CX-5 & CX-4)”;

Doug Witte; “Unknown O’Neill (CX-5-MHU, CX-4 & ACU-Unit)”;

“A. Yates (CX-5 & CX-4)”;

James Toughy;

and “Inmate (Drama) CX4”,

Defendants.

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The Court has received the January 31, 2020 Report and Recommendation of United States Magistrate Judge Becky R. Thorson. ECF No. 158. No party has objected to that Report and Recommendation, and the Court therefore reviews it for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam). Finding no clear error, and based upon all of the files, records, and proceedings in the above-captioned matter, **IT IS ORDERED THAT:**

1. The Report and Recommendation [ECF No. 158] is **ACCEPTED**;
2. Defendant Shane E. Wernsing’s motion to dismiss [ECF No. 66] is **GRANTED**, and Plaintiff’s claims against Defendant Wernsing are **DISMISSED WITH PREJUDICE**;
3. The State Defendants’ Motion to Dismiss [ECF No. 88] is **GRANTED**, and Plaintiff’s claims against the State Defendants<sup>1</sup> are **DISMISSED WITHOUT PREJUDICE**;

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<sup>1</sup> State of Minnesota, Minnesota Department of Corrections, Lori Swanson, Mark Dayton, John Hoffman, Commissioner of Human Services (“John or Jane Doe”), Antilla, Austreng, Bergstad, Berts, Bestgen, Binkley, Bradley, Cash, Clute, Crea, Crowe, Dubois, Ewald, Farmer, Fisher, Fredrick, Girard, Grandstand, Graves, Gutzmer, Hagen, Herme, Hermerding, Hill, Hudak, Huynh, Jennelle, Johnson, Kenyon, Klin, Larson, Lindeman, Lisowy, Loucks, MacNeill, Mamer, Marsh, Medchill, Melvin, Minke, Minetto, Nelson,

4. Plaintiff's claims against Defendants Lon Augdahl, Stephen Craane,<sup>2</sup> and Deborah MacNeill are **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2)(B)(i);

5. Plaintiff's Motion for Leave to File a First Amended Complaint [ECF No. 141] is **DENIED** as futile;

6. Plaintiff's Motion to Present Exhibit B Attached to Memo of Law [ECF No. 153] is **DENIED** as moot; and

7. Plaintiff's Complaint [ECF No. 1] is **DISMISSED**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: March 6, 2020

s/ Eric C. Tostrud

Eric C. Tostrud

United States District Court

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Oye, Perry, Peterson, Rangstich, Reid, Reishus, Rohr, Ronning, Roy, Brenda Smith (Wark), Craig Smith, Jason Smith, Michelle Smith, Spaniol, Speilman, Strickland, Strunk, Amber Swanson, Seth Swanson, Thacker, Thompson, Thor, Torres, Tuohy, Craig Uhl, Katherine Uhl, Wheeler, Wilson, Witte, Witter, Yates (collectively "State Defendants"). Plaintiff also names the following individuals that he alleges are Department of Corrections ("DOC") employees at Minnesota Correctional Facility – Oak Park Heights ("MCF-OPH"): B. Lor; Carlton Perry; Jackson Kosh, Lt. Monfur; O'Neill; S. Stanley; Sgt. Foster. DOC has not identified these individuals, and they have not executed waivers of service as to individual capacity claims.

<sup>2</sup> The Complaint incorrectly identifies Defendant Stephen Craane as "Stephan Cranna." See ECF No. 36 at 2 n.1.